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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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22850	7590	07/28/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
MOSHER, MARY				
ART UNIT		PAPER NUMBER		
16-48				
NOTIFICATION DATE		DELIVERY MODE		
07/28/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/564,964

Applicant(s)

DJIAN ET AL.

Examiner

Mary E. Mosher, Ph.D.

Art Unit

1648

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) 41-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 24 and 26-40 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 4/18/06, 5/15/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of group I, claims 23-40 in the reply filed on 5/15/2008 is acknowledged. The traversal is on the ground(s) that a complete, acellular, live, attenuated enveloped DNA virion of fowlpox virus cannot be made by any other method than the method of group I. However, there is no evidence on this record that fowlpox viruses produced by conventional methods are not live, acellular, attenuated, and enveloped; the poxviruses in general (e.g. fowlpox) do not share the same difficulty for achieving cell-free viable virus as recognized in the art for herpesviruses (e.g. Marek's disease virus).

The requirement is still deemed proper and is therefore made FINAL.

Claims 41-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/15/2008.

Specification

The disclosure is objected to because of the following informalities: it should contain a section heading titled "Brief Description of the Figures", or similar language.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 32-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. Claim 32 is confusing, because the preamble states "culturing avian epidermal cells or keratinocytes", but the active steps only involve keratinocytes, and do not specify avian keratinocytes. Claim 36 also broadly recites "keratinocytes". It is not clear if the intended scope is avian keratinocytes or all species of keratinocytes, or if the scope of cells is limited to keratinocytes or also open to other types of epidermal cells. Claim 38 confuses the scope still further, by broadening the scope from keratinocytes to epidermal cells. Claim 40 also is confusing by stating a different intended purpose for the method of claim 36, while failing to recite any additional active steps.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 23, 24, 26-35 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Vanhoutteghem et al (Differentiation 72: 123-137, April 2004; cited in IDS). Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 23, 24, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samarut et al US 6114168 in view of the ATCC catalog (ATCC Cell Lines and Hybridomas, 8th edition, 1994, page 534). Samarut teaches a culture medium which comprises chicken serum, conventional media components such as those listed in claims 27 and 28, and inactivated mouse embryo fibroblast feeder cells. See column 3, lines 1-35 for example. This differs from the claimed invention in that the feeder cells are strain STO, not strain 3T3. However, the ATCC catalog teaches STO and 3T3 cells as alternatives for inactivated feeder cells. Therefore substitution of 3T3 cells for STO cells is an obvious alternative, absent unexpected results.

Allowable Subject Matter

Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 25 is free of the art, because the prior art does not teach or suggest selection of 3T3 feeder cell subclones for optimal propagation of growth of chicken keratinocytes, or the culture using the resulting cells as inactivated feeder cells.

If the rejection over Vanhoutteghem et al is overcome, and claims 32-40 are amended to specify avian keratinocytes, then claims 29-35 would be allowable, because the remainder of the prior art does not provide particular reasons for using the claimed chicken serum/feeder cell media for growth of avian keratinocytes instead of avian embryonic stem cells. Claims 36-40 would then also be allowable, because the prior art does not provide particular reasons for propagating viruses in the chicken serum/feeder cell/avian keratinocyte culture.

Xi et al (Journal of Reproduction and Development 49: 213-219, 2003) is cited as of interest as a different method of culturing avian keratinocytes.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is 571-272-0906. The examiner can normally be reached on varying dates and times; please leave a message.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary E Mosher, Ph.D./
Primary Examiner, Art Unit 1648

7/17/08